

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49608 of 2023

Applicant :- Wakeel Sharma And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.
3. The present first bail application under Section 439 Cr.P.C. has been filed on behalf of the applicant in Case Crime No. 347 of 2023 under Sections 452, 323, 504, 506, 325, 324, 307 I.P.C. Police Station Kasya, District Kushinagar with the prayer to enlarge him on bail.
4. Learned counsel for the accused-applicants submitted that the applicants are innocent and have been falsely implicated in the instant case due to malafide intentions. As per the F.I.R., the dispute between the parties arose on the ground of taking possession of land. It is submitted that cross F.I.R.s were registered and applicant also registered F.I.R. It is further submitted that in the present case F.I.R. has been lodged after a delay of four days without any explanation. It is contended that five persons were injured from the side of the applicant and injury report is filed today by way of supplementary affidavit. It is next contended that it is to be decided at the trial as to who was the aggressor. It is further contended that co-accused Chandrabhan @ Chandrabhag has been

released on bail by co-ordinate Bench of this Court vide order dated 17.11.2023 passed in Criminal Misc. Bail Application No. 47586 of 2023. It is further contended that injuries caused to the injured Prashawati and Rani are simple in nature except injury No. 1 of injured Rani and injury caused to Ashish Sharma are simple in nature and caused by hard and blunt object. There is no injury caused by Farsa as alleged in the F.I.R. as well as in the statement of informant. Applicants are languishing in jail since 10.10.2023 having no criminal history to their credit and if they are granted the liberty of bail they will not misuse the same and there is no possibility to tamper with the evidence and flee from the jurisdiction of this Court and they are ready to furnish their sufficient sureties, bonds and personal bonds and shall co-operate in the trial.

5. On the other hand, learned AGA has opposed the prayer of bail but could not controvert the aforesaid arguments as advanced by learned counsel for the applicant.

6. Considering the fact that there are cross versions against each other, five persons from the side of the applicant also sustained injuries, injuries sustained by the injured are not opined as grievous in nature, it is to be decided at the trial as to who is the aggressor, co-accused Chandrabhan has already been enlarged on bail by co-ordinate Bench of this Court, applicants are languishing in jail since 10.10.2023 having no criminal history to their credit and without expressing any opinion on the merits of the case, accused-applicants are liable to be released on bail.

7. Let applicants **Wakeel Sharma** and **Santosh Sharma** be released on bail in

the above case crime number and on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicants are deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against them in accordance with law.

(v) The applicants shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicants shall also give an undertaking to the effect that they will not change their address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 29.11.2023

Karan